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CLERK U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CANTONUNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:)	CHAPTER 7
)	
PASQUALE TRISCARI,)	CASE NO. 08-61073
)	
Debtor.)	JUDGE RUSS KENDIG
)	
)	
)	MEMORANDUM OF OPINION
)	(NOT INTENDED FOR
)	PUBLICATION)

This matter is before the court on Debtor's Application to Proceed *In Forma Pauperis* (hereafter "application") filed on April 7, 2008.

Following passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, debtors are permitted to seek a waiver of the bankruptcy filing fee. Pursuant to 28 U.S.C. § 1930(f), a "bankruptcy court may waive the filing fee . . . if the court determines that such individual has less than 150 percent of the income official poverty line . . . applicable to a family of the size involved and is unable to pay that fee in installments." By the terms of the statute, a court's ability to waive the fee is permissive, not mandatory ("may waive"), and is premised upon a finding that a debtor meets the income and inability to pay in installments criteria.

The court will first determine whether Debtors' income is 150 percent of the poverty level. According to the Department of Health and Human Services 2008 Poverty Level Guidelines, available at <http://aspe.hhs.gov/poverty/08poverty.shtml>, the poverty income for a family of one is \$10,400.00. At 150 percent of poverty, the poverty income for this family is \$15,600.00 annually, or \$1,300.00 per month.

According to the application, Debtor's monthly income includes \$912.00 in social security benefits and net wages of \$552.07 from his employment, for a total of \$1,464.07. *See* Sch. J, line 16. On an annual basis, Debtor's income exceeds \$17,500.00. Based upon this information, the court finds that Debtor's income is more than 150% of the applicable poverty level and therefore he has failed to establish the first prong of the test.

Although further review is not necessary, the Court also finds that Debtor has the ability to pay the filing fee. Upon review of Debtor's Schedule J, the Court notes that Debtor shows monthly net income of \$568.07. The Court recognizes that the expenses listed by Debtor are not unreasonable, and even modest. Nonetheless, there is more than sufficient income to allow Debtor to pay the filing fee in installments. Thus, the court finds that Debtor has the ability to pay the filing fee in installments and has not satisfied

the second prong of the test.

In light of the above, the Court hereby **DENIES** Debtor's application to waive the filing fee. Debtor shall be permitted to pay the filing fee in installments of \$100.00 until the fee is paid in full and may pay the amount in full anytime during the payment plan.¹ The first payment is due on **May 9, 2008**. If paying by mail, Debtor shall send a money order, payable to Clerk, United States Bankruptcy Court, to United States Bankruptcy Court, 201 Cleveland Ave., S.W., Canton, OH 44702. If paying in person, Debtor shall bring either the exact amount of cash or a money order, payable to Clerk, United States Bankruptcy Court, to the Clerk's Office. Failure to pay the filing fee in accordance with this order will result in dismissal of the case.

An order in accordance with this decision shall be issued immediately.

/s/ Russ Kendig

RUSS KENDIG
U.S. BANKRUPTCY JUDGE

Service List:

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Mansfield, OH 44902

Anthony J. DeGirolamo, Trustee
Courtyard Centre, Suite 625
116 Cleveland Ave., N.W.
Canton, OH 44702

¹ The payment schedule is as follows:

May 9, 2008 :	\$100.00
June 13, 2008:	\$100.00
July 11, 2008:	\$ 99.00